

Arizona Supreme Court
Judicial Ethics Advisory Committee

ADVISORY OPINION 12-01
(April 19, 2012)

**Volunteer Hearing Officers – Ability to Serve in Light of Interests in Companies
with Cases Pending in Their Courts**

Issue

Can justice court volunteer hearing officers who privately own or work for collection companies that have cases pending in justice court continue to serve as hearings officers in other types of cases consistent with the requirement in Rule 1.2 of the Arizona Code of Judicial Conduct that judges avoid the appearance of impropriety?

Answer: No.

Facts

Maricopa County justice courts utilize volunteer hearing officers, who are authorized to act as judicial officers for small claims divisions. *See* A.R.S. § 22-506. The Justice Courts have recently discovered that a number of these volunteer hearing officers privately own or work for collection companies and these companies may in fact have a large number of open cases in varying degrees of litigation, or closed cases, which may include judgments and garnishments in the justice courts. The hearing officers have security clearances, access to court files, and personal contact with the clerks and judges in the same court building and throughout the county court system where their company's cases are pending.

Discussion

Rule 1.2 states that a judge “shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” Comment 5 to Rule 1.2 provides, in part, that “The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated [the] code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.” The Committee is of the opinion that the public and litigants could reasonably perceive that a volunteer hearing officer in the category under consideration may not be impartial in their cases based on the volunteer hearings officers’ interest in favorable rulings in the cases they also have pending before the elected justices in their justice courts. The public and litigants may also reasonably perceive that a volunteer hearing officer with a financial interest in matters in the same court may have unfair access to the judge who will preside over those matters. Judges have an ethical

duty to promote public confidence in the independence, integrity, and impartiality of the judiciary and to ensure that they are impartial and appear to be impartial.

The limited and voluntary nature of a hearing officer's role does not affect the applicability of Rule 1.2. A hearing officer authorized to perform judicial functions is defined as a "Judge" for purposes of the Code and thus is subject to the requirements of Rule 1.2.

The conclusion that the volunteer hearing officers in question should not continue to serve as hearings officers in unrelated cases while they have cases pending in their courts that affect their personal interests should not be construed as concluding any such hearing officer has engaged in any actual impropriety. The court system relies on and appreciates the services performed by volunteer hearings officers. If and when the affected hearing officers are no longer involved with companies that regularly appear in the courts in which they desire to serve, they can again be considered for such service.

References

Arizona Code of Judicial Conduct, Rule 1.2

Arizona Revised Statutes, §22-506